

# SENATE BILL REPORT

## E2SSB 6358

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As Passed Senate, February 16, 2004

**Title:** An act relating to improved collaboration regarding offenders with treatment orders.

**Brief Description:** Improving collaboration regarding offenders with treatment orders.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Hargrove and Stevens).

**Brief History:**

**Committee Activity:** Children & Family Services & Corrections: 1/21/04, 2/4/04 [DPS-WM].

Ways & Means: 2/9/04 [DP2S].

Passed Senate: 2/16/04, 48-0.

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### SENATE COMMITTEE ON CHILDREN & FAMILY SERVICES & CORRECTIONS

**Majority Report:** That Substitute Senate Bill No. 6358 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Stevens, Chair; Parlette, Vice Chair; Carlson, Deccio, Hargrove, McAuliffe and Regala.

**Staff:** Fara Daun (786-7459)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 6358 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Zarelli, Chair; Hewitt, Vice Chair; Parlette, Vice Chair; Carlson, Doumit, Fairley, Fraser, Hale, Honeyford, Johnson, Pflug, Rasmussen, Regala, Roach, Sheahan, B. Sheldon and Winsley.

**Staff:** Tim Yowell (786-7435)

**Background:** Concerns have been raised that, for offenders under supervision by the Department of Corrections (DOC) who are subject to treatment orders for mental health or chemical dependency, the level of communication and collaboration may need improvement. There is confusion over the degree to which the Health Insurance Portability and Accountability Act permits communication between multi-disciplinary teams.

There is also concern that where a person's mental disorder is caused by methamphetamine or other drugs, or caused by head trauma, that person is not considered appropriate for civil commitment despite meeting the standard for commitment.

**Summary of Bill:** When a person has a mental disorder and is otherwise committable, the cause of the disorder does not make the person ineligible for commitment.

When a court issues an order for mental health or chemical dependency treatment, the order must contain a statement that if the person is, or becomes, subject to DOC supervision, the person must notify his or her treatment provider and the person's mental health or chemical dependency treatment information must be shared with DOC. When a person is convicted in superior court, the judgment and sentence must contain an equivalent statement. Upon petition by a person who has no history of violent acts, the court may find that public safety would not be enhanced by the sharing of this person's information.

When DOC is determining an offender's risk management level, DOC must ask and must be told whether the offender is subject to court-ordered mental health or chemical dependency treatment. When an offender discloses he or she is subject to court-ordered treatment, DOC must request an authorization to share treatment information and notify the offender that the information will be shared. DOC must make a written request for information from the treatment provider. The authorization and the written request do not expire until the end of the supervision. If an offender has failed to report to DOC as required, or in an emergent situation, the treatment provider may share information related to mental health services delivered to the offender and, if known, where an offender may be found on an oral request from DOC. Oral requests must be confirmed with a written request which may be made by email or facsimile. A request for treatment information does not require the consent of the offender. There is a parallel provision for mental health and chemical dependency treatment providers. The law enforcement exception to the mental health confidentiality law includes DOC and is mandatory upon the provider.

When a state hospital admits a person with a history of violent acts from a correctional facility or who is or has been under DOC supervision, the hospital must consult with the appropriate corrections and chemical dependency personnel and forensic staff to conduct a discharge review to determine whether the person presents a likelihood of serious harm and whether the person is appropriate for a less restrictive alternative. If the person is returned to a correctional facility, the hospital must notify the correctional facility that the person was subject to a discharge review.

When a jail releases a person subject to a discharge review, the jail must notify the county designated mental health professional (CDMHP) or county designated chemical dependency specialist (CDCDS) 72 hours in advance of the release, or upon release if the jail did not have 72 hours notice. The CDMHP or CDCDS, as appropriate, must evaluate the person within 72 hours of release.

When a CDMHP or CDCDS becomes aware that an offender is in violation of the terms of his or her supervision, or when the CDMHP or CDCDS detains a person, the CDMHP or CDCDS must notify the person's treatment provider and DOC. When DOC becomes aware that an offender is in violation of the terms of his or her court-ordered mental health or chemical dependency treatment order, DOC must notify the CDMHP or CDCDS of the violation and request an evaluation for purposes of revocation of the less restrictive alternative or conditional release.

DOC and the Department of Social and Health Services (DSHS) must develop a training plan for information sharing on offenders under supervision who are subject to mental health or chemical dependency treatment orders. DOC, DSHS and the Washington Association of Prosecuting Attorneys must develop a model for multi-disciplinary case management and release planning for offenders with high resource needs in multiple service areas. DSHS must assess the needed and available capacity for crisis response and ongoing treatment for persons with mental disorders, chemical dependency and for those with multiple disorders or complex causation. Legislative staff must review other state programs.

**Appropriation:** None.

**Fiscal Note:** Requested on January 19, 2004.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Testimony For (Children & Family Services & Corrections):** DOC and DSHS support the intent of the bill and are working on friendly amendments. In 2000, Snohomish County's multi-disciplinary "A" teams were recognized for reducing county bed days and costs related to high needs offenders. DOC and DSHS expanded the teams statewide. Concerns about HIPAA are causing some teams to disband. This would establish training on keeping communications open and a HIPAA-compliant model for the teams.

Provider authority to contact DOC and to provide DOC with information is important to public safety. It is important that the first person who is aware of a problem with an offender be able to communicate with the others involved in the case. Current law allows a treatment provider 30 days to respond to a request by DOC. There needs to be an emergency provision that permits some information to be shared on an immediate basis. DOC would like to be able to provide the civil commitment court with information on it's offenders subject to a commitment petition.

While HIPAA attempted to standardize the protection of records nationally, there are different answers about what is disclosable depending on who's talking. The statutory exception to HIPAA is triggered by mandatory, rather than permissive, language so language must be mandatory.

Methamphetamine-induced psychosis is often caused by a combination of drugs with lack of food and sleep. It can cause a psychosis that looks like mental illness, which is more likely if there has been a previous episode. It requires the same kind of treatment as other psychosis. A person is "clear" when both detoxified and stable. If the person, following release, does not take their psychotropic medications as prescribed and does take illicit drugs, the person could relapse. Psychoses are not always violent but may be a reaction to a sense of threat.

The decision whether to hold or release a person who has stabilized in the hospital is always difficult because the person's environment will change and that can cause a change in the person's stability. The hospital cannot guarantee that the person will continue with the medications or know if the person has returned to abusing drugs. The Crisis Response Task Force is looking at how to fix some of the systemic issues at both the state and local level. This bill should include the regional support networks and the county drug and alcohol coordinators in the effort.

**Testimony Against (Children & Family Services & Corrections):** None.

**Testified (Children & Family Services & Corrections):** Senator Jim Hargrove, sponsor (pro); Ken Stark, DSHS Division of Drug and Alcohol Abuse (concerns and friendly amendments); Karl Brimmer, DSHS Mental Health Division (concerns and friendly amendments); Victoria Roberts, Department of Corrections (pro); Tom McBride, Washington Association of Prosecuting Attorneys (pro); Jean Wessman, Washington Association of County Officials (pro).

**Testimony For (Ways & Means):** The bill seeks to assure that there is better review, communication, and collaboration when persons who have a clear history of violent behavior are released back to the community after spending time in both a correctional facility and a psychiatric hospital. While this cannot assure that tragic acts of violence never occur, it will reduce the risk. The confidentiality provisions of the federal Health Insurance Portability and Affordability Act (HIPAA) have presented new barriers to the exchange of information between treatment providers and community corrections officers. This legislation will reduce those barriers and promote collaborative treatment.

Concerns: Funding for this legislation is not included in the Governor's supplemental budget proposal.

**Testimony Against (Ways & Means):** None.

**Testified (Ways & Means):** Senator Jim Hargrove, sponsor (pro); Ken Stark, DSHS Division of Alcohol and Substance Abuse (pro w/concerns); Karl Brimmer, DSHS Mental Health Division (pro w/concerns); Victoria Roberts, Department of Corrections (pro w/concerns).

**House Amendment(s):** Technical amendments are made to correct terminology and remove duplicative language. It is clarified that DOC's responsibility in an offenders' civil commitment petitions is to provide both the petitioner and the court with documentation of its risk assessment or other concerns if it has classified the offender as high risk or high needs.

It limits a treatment provider's duty to report supervision violations to those that relate to public safety.

It is clarified that collaborative provisions do not create a duty for treatment providers to supervise offenders, and protection from private suits for information shared and action taken without gross negligence and in good faith compliance with the act is provided.